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9 *Attorneys for Defendant NFP Property & Casualty*  
10 *Services, Inc.*

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF NEVADA**

14 DIVINE WELLNESS, LLC, a Nevada Limited  
15 Liability Company, d/b/a ELEVATED SAUNA  
& CRYOTHERAPY STUDIO,

16 Plaintiff,

17 v.

18 NFP PROPERTY & CASUALTY SERVICES,  
19 INC., a foreign corporation; and  
TRANSPORTATION INSURANCE  
COMPANY, a foreign business entity.

20 Defendants.

21 CASE NO:

22 **PETITION FOR REMOVAL**

23 Defendant NFP Property & Casualty Services, Inc. ("NFP") hereby files this Notice of Removal  
pursuant to 28 U.S.C. §§ 1332, 1441, and would show the Court as follows:

24 **I. COMMENCEMENT AND SERVICE**

25 On October 19, 2023, Plaintiff Divine Wellness, LLC, d/b/a Elevated Sauna & Cryotherapy Studio  
26 ("Plaintiff") commenced this action against NFP and Transportation Insurance Company by filing  
27 Plaintiff's Petition in the District Court of Clark County, Nevada, Cause No. A-23-879968-C, styled *Divine*

*Wellness, LLC, a Nevada Limited Liability Company, d/b/a/ Elevated Sauna & Cryotherapy Studio v. NFP Property & Casualty Services, Inc., a foreign corporation; Transportation Insurance Company, a foreign business entity (“State Court Action”).<sup>1</sup>*

NFP has not yet been served with process but has obtained access to the initial pleading.

This Notice of Removal is timely filed within thirty days of the receipt of Plaintiff's Petition, pursuant to 28 U.S.C. § 1446(b). This Notice of Removal is also filed within one year of the commencement of this action, and is thus timely pursuant to 28 U.S.C. § 1446(c).

## II. GROUNDS FOR REMOVAL

NFP is entitled to remove the entire state court matter to this Court pursuant to 28 U.S.C. § 1332 because this action is a civil action involving diversity of citizenship and an amount in controversy exceeding \$75,000.00.

Removal of the entire state court matter to this Court is also proper under 28 U.S.C. § 1441(a) and 1446(a) because the Court's district and division embraces the pending state court action in the 8<sup>th</sup> Judicial District Court, in and for Clark County, Nevada.

### III. DIVERSITY JURISDICTION

This is an action with complete diversity of citizenship between the Parties.

Based upon the allegations in the Complaint, Plaintiff is a Nevada Limited Liability Company and has its principal place of business in Henderson, Clark County, Nevada. Limited liability companies have the citizenship of each of its owners and members. *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 902 (9th Cir. 2006). Plaintiff's sole managing member is listed as Jennifer Stuart, whose address is 2790 Gullane Street, Las Vegas, Nevada 89142. As such, she is domiciled in and is a resident of Nevada. Plaintiff is therefore a citizen of Nevada within the meaning and intent of 28 U.S.C. § 1332.

NFP is incorporated in the State of New York with its principal place of business located in Glendale, Arizona. NFP is therefore a citizen of New York and Arizona within the meaning and intent of 38 U.S.C. § 1332.

<sup>1</sup> See Exhibit 2, Complaint.

Transportation Insurance Company is an Illinois company with its principal place of business located in Chicago, Illinois. Transportation Insurance Company is therefore a citizen of Illinois within the meaning and intent of 38 U.S.C. § 1332.

Pursuant to 28 U.S.C. §§ 1332 and 1441, there is complete diversity of citizenship between Plaintiff and Defendants. There are no known changes of citizenship since commencement of the State Court Action.

According to the Complaint, Plaintiff is seeking general damages in excess of \$15,000, consequential damages in excess of \$15,000, incidental damages in excess of \$15,000, actual damages in excess of \$15,000, punitive damages and exemplary damages in excess of \$15,000 and attorneys' fees.<sup>2</sup> Attorneys' fees can be included in the amount in controversy where authorized by statute. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). Nevada law allows for an award of attorneys' fees to a prevailing party by statute. N.R.S. § 18.010. Also, Plaintiff asserts a cause of action for declaratory relief. Under the Federal Declaratory Judgment Act, attorneys' fees may be awarded as damages. 28 U.S.C. § 2202. As such, adding the minimum damages pled under each item of damages and considering the request for attorneys' fees, the amount in controversy exceeds \$75,000.

While NFP denies Plaintiff's allegations and all liability, and specifically denies that Plaintiff is entitled to any damages whatsoever, it is established on the face of the Complaint that the amount in controversy exceeds \$75,000.

Therefore, this Court has jurisdiction under 28 U.S.C. 1332, and this action is properly removable pursuant to 28 U.S.C. § 1441(b).

### III. VENUE

Venue lies in the United States District Court for the District of Nevada pursuant to 28 U.S.C. §§ 1441(a) and 1446(a), because Plaintiff filed the state court action in this judicial district and division.

<sup>2</sup> Exhibit 2, prayer paragraph.

## IV. NOTICE

NFP will give notice of the filing of this Notice of Removal to all parties of record pursuant to 28 U.S.C. § 1446(d). NFP will also file with the clerk of the state court and will serve upon Plaintiff's counsel a notice of the filing of this notice of removal.

## **V. CONSENT TO REMOVAL**

At the time of filing of this removal, Transportation Insurance Company has not been properly served.<sup>3</sup> Therefore, its consent is not required pursuant to 28 U.S.C. § 1446(b)(2)(A).

## VI. JURY DEMAND

Plaintiff demanded a jury in its Complaint.

## **VII. STATE COURT PLEADINGS**

Copies of all state court pleadings and orders are attached to this Notice of Removal.

## **VIII. EXHIBITS TO NOTICE OF REMOVAL**

The following documents are attached to this Notice as correspondingly numbered exhibits:

### Exhibit 1: Copy of State Court Docket Sheet

## Exhibit 2: Complaint

### Exhibit 3: Initial Appearance Fee Disclosure

## IX. CONCLUSION

WHEREFORE, Defendant NFP Property & Casualty Services Inc., pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. §§ 1331, 1441(a), (c), and 1446, removes this action from the District Court of Clark County, Nevada, to this Court.

DATE: November 3, 2023.

By: Charles H. McCrea  
Charles H. McCrea (NSB #104)  
**PRHLAW LLC**  
520 South Fourth Street, Suite 360  
Las Vegas, Nevada 89101

8 The docket sheet, Exhibit 1, reflects no request for issuance of any summons and does not include proof of service of process.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on the 7<sup>th</sup> day of November 2023 on the following counsel of record by certified mail, return receipt requested:

Judd J. Balmer, Esq., Ltd.  
170 S. Green Valley Parkway, Suite 300  
Henderson, Nevada 89012

Charles H. McCrea  
Charles H. McCrea

# **EXHIBIT 1**

## **State Court Docket Sheet**

## Case Information

A-23-879968-C | Divine Wellness LLC, Plaintiff(s) vs. NFP Property & Casualty Services Inc, Defendant(s)

Case Number	Court	Judicial Officer
A-23-879968-C	Department 5	Barisich, Veronica M.
File Date	Case Type	Case Status
10/19/2023	Negligence - Other Negligence	Open

## Party

Plaintiff  
Divine Wellness LLC

Active Attorneys▼  
Lead Attorney  
Balmer, Judd J.  
Retained

Aliases  
DBA Elevated Sauna & Cryotherapy Studio

Defendant  
NFP Property & Casualty Services Inc

Defendant  
Transporation Insurance Company

## Events and Hearings

10/19/2023 Complaint ▼

Complaint - COMP (CIV)

10/19/2023 Initial Appearance Fee Disclosure ▾

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

[2] Initial Appearance Fee Disclosure

## Financial

Divine Wellness LLC

Total Financial Assessment	\$270.00
Total Payments and Credits	\$270.00

10/19/2023 Transaction	\$270.00
Assessment	

10/19/2023 Efile Payment	Receipt # 2023-88890- CCCLK	Divine Wellness, LLC, d/b/a Elevated Sauna & Cryotherapy Studio	(\$270.00)
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## Documents

Complaint - COMP (CIV)

Initial Appearance Fee Disclosure - IAFD (CIV)

# **EXHIBIT 2**

## **Complaint**

1 COMP  
 2 **JUDD J. BALMER, ESQ.**  
 3 NEVADA BAR NO. 006212  
 4 **JUDD J. BALMER, ESQ., LTD.**  
 5 *A Nevada Professional Corporation*  
 6 170 S. Green Valley Parkway, Suite 300  
 Henderson, Nevada 89012  
 T: (702) 642-4200  
 F: (702) 642-4300  
 E: [jbalmer@balmerlawfirm.com](mailto:jbalmer@balmerlawfirm.com)  
 7 *Attorney for Plaintiff DIVINE WELLNESS, LLC,*  
*a Nevada Limited Liability Company, d/b/a*  
*ELEVATED SAUNA & CRYOTHERAPY STUDIO*

CASE NO: A-23-879968-C  
 Department 5

8 **DISTRICT COURT**  
 9 **CLARK COUNTY, NEVADA**

10 DIVINE WELLNESS, LLC, a Nevada  
 Limited Liability Company, d/b/a  
 11 ELEVATED SAUNA & CRYOTHERAPY  
 STUDIO;

Case No.:  
 Dept. No.:

12 Plaintiff,

**COMPLAINT**

13 v.

14 **JURY TRIAL DEMANDED**

15 NFP PROPERTY & CASUALTY SERVICES,  
 INC., a foreign corporation;  
 16 TRANSPORTATION INSURANCE  
 COMPANY, a foreign business entity; DOES I  
 17 through XXX, inclusive; ROES I through  
 XXX, inclusive,

**(Arbitration Exemption Claimed:  
 Declaratory Relief)**

18 Defendants.

20  
 21 COMES NOW, Plaintiff DIVINE WELLNESS, LLC, a Nevada Limited Liability Company,  
 22 d/b/a ELEVATED SAUNA & CRYOTHERAPY STUDIO, by and through its attorney of record,  
 23 JUDD J. BALMER, ESQ., LTD., A Nevada Professional Corporation, and hereby complains and  
 alleges as follows:

24 **L.**

25 **PARTIES, VENUE AND JURISDICTION**

26 1. At all times relevant herein, Plaintiff DIVINE WELLNESS, LLC, a Nevada Limited  
 27 Liability Company, d/b/a ELEVATED SAUNA & CRYOTHERAPY STUDIO ("DIVINE

1 WELLNESS”), was and is a Nevada limited liability company with its principal place of business  
 2 in Henderson, Clark County, Nevada.

3       2. At all times relevant herein, Defendant NFP PROPERTY & CASUALTY  
 4 SERVICES, INC. (“NFP”), was a foreign corporation doing business as an insurance agent and  
 5 broker in Clark County, Nevada. Defendant NFP acted as insurance broker for Plaintiff DIVINE  
 6 WELLNESS and insurance agent for Defendant TRANSPORTATION INSURANCE COMPANY.

7       3. At all times relevant herein, Defendant TRANSPORTATION INSURANCE  
 8 COMPANY (“TRANSPORATION”), a foreign business entity, was a CNA-affiliated underwriting  
 9 company, operating in Nevada as a casualty insurer and writing casualty insurance policies to  
 10 insureds in Nevada, including Plaintiff DIVINE WELLNESS. TRANSPORTATION writes  
 11 casualty insurance policies in Clark County, Nevada, and, at all times relevant herein, was Plaintiff  
 12 DIVINE WELLNESS’s casualty insurance carrier.

13       4. At all times relevant herein, DOE and ROE Defendants were doing business in the  
 14 State of Nevada, as insurance brokers, insurance professionals, insurance underwriters and/or  
 15 insurance companies. Said Defendants held themselves out to the public at large, and Plaintiff  
 16 DIVINE WELLNESS in particular, to be insurance brokers, insurance professionals, insurance  
 17 underwriters and/or insurance companies, skilled in the selection of insurance policies, placement  
 18 of insurance coverage, and/or underwriting for casualty and liability insurance policies for  
 19 commercial entities in Nevada, such as Plaintiff DIVINE WELLNESS. At all times relevant herein,  
 20 and upon information and belief, one or more of said Defendants were (a) subcontractor(s) and/or  
 21 agents of Defendant NFP and/or Defendant TRANSPORTATION. The true names or capacities,  
 22 whether individual, corporate, associate or otherwise, of said DOE and ROE Defendants are  
 23 unknown to Plaintiff, who, therefore, sues said Defendants by such fictitious names. Plaintiff is  
 24 informed and believes and thereon alleges that each of the Defendants designated herein as DOE or  
 25 ROE is legally responsible in some manner for the events and happenings referred to and legally  
 26 and proximately caused injury and damages thereby to Plaintiff as herein alleged. Plaintiff will seek  
 27 leave of the Court to amend this Complaint to insert the true names and capacities of said DOE and  
 28 ROE Defendants when the same have been ascertained, and to join such Defendants in the action.

5. This Court has jurisdiction in this matter because, among other things, this Complaint  
 27 stems from damage sustained by Plaintiff in the State of Nevada. Venue is proper in Clark County,  
 28

Nevada, pursuant to NRS 13.050(1) because both Defendant NFP and Defendant TRANSPORATION regularly conduct business in Clark County, Nevada.

6. Plaintiff has timely brought this action well within all applicable limitation periods under Nevada law.

II.

## **FACTUAL ALLEGATIONS**

7. At all times relevant herein, Plaintiff DIVINE WELLNESS has operated a sauna and cryotherapy studio in Henderson, Clark County, Nevada. At all times relevant herein, Defendant NFP and Defendant TRANSPORTATION have been on notice of the nature of Plaintiff's business operations, including cryotherapy, and the equipment utilized in the course and scope of Plaintiff's business operations.

8. In order to protect its sauna and cryotherapy business from third party casualty and liability claims arising in the operation of Plaintiff DIVINE WELLNESS's business, Plaintiff DIVINE WELLNESS hired Defendant NFP, an insurance brokerage, to procure appropriate casualty and liability insurance coverage for the sauna and cryotherapy studio, including casualty and liability insurance against customer personal injury claims arising out of cryotherapy services and equipment.

9. NFP represented to DIVINE WELLNESS that it and each of its brokers had superior skills, expertise and knowledge of commercial property insurance above and beyond those of an ordinary insurance agency. NFP further represented that it would competently and fully assess the insurance needs of Plaintiff DIVINE WELLNESS and procure an adequate insurance policy covering Plaintiff DIVINE WELLNESS for casualty and liability, including third party claims for personal injury, arising out of the operation of Plaintiff's sauna and cryotherapy studio and specifically arising out of cryotherapy services and equipment.

10. It is alleged upon information and belief that at all times relevant herein, NFP was a legal agent of TRANSPORTATION for purposes of applying for and selling TRANSPORTATION insurance policies. It is further alleged upon information and belief that NFP's relationship with TRANSPORTATION involves training, education, and incentive plans to NFP.

11. Plaintiff DIVINE WELLNESS specifically informed NFP in writing that Plaintiff DIVINE WELLNESS offered use of its cryotherapy equipment to customers in the regular course

1 of its business. Furthermore, Plaintiff DIVINE WELLNESS confirmed its casualty and liability  
 2 insurance requests in writing to NFP. NFP agreed to procure adequate and appropriate casualty  
 3 and liability insurance for Plaintiff DIVINE WELLNESS's sauna and cryotherapy studio business,  
 4 including protection against injury claims made by customers arising out of cryotherapy.

5       12. Based on these representations, Plaintiff DIVINE WELLNESS requested, and  
 6 Defendant NFP agreed to procure, adequate and appropriate casualty and liability insurance for  
 7 Plaintiff DIVINE WELLNESS's sauna and cryotherapy business.

8       13. Based on these representations and agreements, independently and collectively, NFP  
 9 assumed and undertook a duty of care to ensure the insurance procured was adequate and satisfied  
 Plaintiff DIVINE WELLNESS's insurance requirements.

10      14. Defendant NFP, acting as both an insurance broker for Plaintiff DIVINE  
 11 WELLNESS and an agent for TRANSPORTATION, caused TRANSPORTATION to issue a  
 12 casualty and liability insurance policy covering Plaintiff DIVINE WELLNESS's sauna and  
 13 cryotherapy business. Despite TRANSPORTATION's later contention that NFP failed to properly  
 14 place casualty and liability insurance coverage for Plaintiff DIVINE WELLNESS's cryotherapy  
 15 services, NFP represented to Plaintiff DIVINE WELLNESS at the time of casualty and liability  
 16 insurance coverage placement that casualty and liability for Plaintiff DIVINE WELLNESS's  
 17 cryotherapy services were covered under the TRANSPORTATION casualty and liability insurance  
 18 policy selected, recommended, and procured by Defendant NFP for Plaintiff DIVINE WELLNESS.

19      15. In response to NFP's request for casualty and liability insurance coverage for  
 20 Plaintiff DIVINE WELLNESS's sauna and cryotherapy studio business, TRANSPORTATION  
 21 issued to Plaintiff DIVINE WELLNESS a Businessowners Liability insurance policy, Policy No. B  
 22 6021190421, effective July 27, 2021, to July 27, 2022, providing \$1 million limit of insurance for  
 23 liability and medical expense - each occurrence, \$10,000 medical expense limit - per person, and \$2  
 million limit for general aggregate (the "Policy").

24      16. Plaintiff DIVINE WELLNESS relied upon NFP's representations and responses to  
 25 its requests that the Policy covered Plaintiff DIVINE WELLNESS's sauna and cryotherapy studio  
 26 business for liability related to the cryotherapy services offered to customers. NFP repeatedly  
 27 confirmed to Plaintiff DIVINE WELLNESS that the Policy provided Plaintiff DIVINE  
 28 WELLNESS business casualty and liability coverage for cryotherapy services.

1       17. A cryotherapy customer of Plaintiff DIVINE WELLNESS, Antonella Maddalena  
 2 (“Maddalena”), alleges that on or about October 20, 2021, she suffered injuries in Plaintiff DIVINE  
 3 WELLNESS’s cryotherapy chamber. Following October 20, 2021, Maddalena made a liability  
 4 claim against Plaintiff DIVINE WELLNESS for her alleged personal injuries.

5       18. After Maddalena asserted her liability claims against Plaintiff DIVINE WELLNESS  
 6 for personal injuries, Plaintiff DIVINE WELLNESS timely tendered Maddalena’s injury claims to  
 7 NFP and TRANSPORTATION for defense and indemnity under the Policy. At the time of  
 8 Maddalena’s alleged injury in the cryotherapy chamber at Plaintiff DIVINE WELLNESS’s sauna  
 9 and cryotherapy studio and at the time Plaintiff DIVINE WELLNESS tendered Maddalena’s injury  
 10 liability claim to TRANSPORTATION, Plaintiff DIVINE WELLNESS had satisfied its obligations  
 11 under the Policy and had paid all required insurance premiums for the Policy.

12       19. After receiving notice of Maddalena’s claims, TRANSPORTATION improperly  
 13 denied liability insurance coverage to Plaintiff DIVINE WELLNESS, contending that the Policy  
 14 selected and placed by NFP with TRANSPORTATION did not cover Plaintiff DIVINE  
 15 WELLNESS’s cryotherapy services to customers, leaving Plaintiff DIVINE WELLNESS without  
 16 defense and indemnity against Maddalena’s liability claim that alleges personal injuries.

17       20. On July 26, 2022, Maddalena filed a lawsuit against Plaintiff DIVINE WELLNESS  
 18 in Clark County, Nevada, styled *Maddalena v. Divine Wellness, LLC, d/b/a Elevated Sauna &*  
*Cryotherapy Studio, et al.*, Case No. A-22-855964-C (the “Lawsuit”), seeking damages for personal  
 19 injury relating to Plaintiff DIVINE WELLNESS’s cryotherapy chamber. Again, Plaintiff DIVINE  
 20 WELLNESS timely tendered to NFP and TRANSPORTATION notice of Maddalena’s Lawsuit.  
 21 Again, TRANSPORTATION improperly denied liability insurance coverage to Plaintiff DIVINE  
 22 WELLNESS, contending that the Policy selected and placed by NFP with TRANSPORTATION  
 23 did not cover Plaintiff DIVINE WELLNESS’s cryotherapy services to customers, leaving Plaintiff  
 24 DIVINE WELLNESS without defense and indemnity against Maddalena’s Lawsuit that alleges  
 25 personal injuries.

26       21. TRANSPORTATION contends that NFP failed to procure the appropriate liability  
 27 coverage from TRANSPORTATION for Plaintiff DIVINE WELLNESS’s cryotherapy services.

28       22. To the extent that TRANSPORTATION’s refusal to defend and indemnify Plaintiff  
 29 DIVINE WELLNESS under the Policy is correct, NFP is liable for the Policy benefits that Plaintiff  
 30

DIVINE WELLNESS would and should have recovered, including the defense and indemnity against Maddalena's personal injury claim and Lawsuit.

23. To the extent that TRANSPORTATION's refusal to defend and indemnify Plaintiff DIVINE WELLNESS under the Policy is correct, TRANSPORTATION is liable as a principal for NFP's negligence.

24. As a result of the conduct of each of the Defendants noted above, Plaintiff DIVINE WELLNESS has experienced substantial damage and losses, has been deprived of a defense and indemnity of Maddalena's claim and Lawsuit for personal injury, has been severely impeded in its ability to sell its business, and is suffering other general, special, consequential, incidental, and actual damages, including the costs of legal counsel, litigation costs, danger of adverse judgment, and other damages.

III.

## **FIRST CLAIM FOR RELIEF**

**(Reformation – Plaintiff DIVINE WELLNESS Against TRANSPORTATION and DOES I-X and ROES I-X)**

25. Plaintiff DIVINE WELLNESS realleges and incorporates herein each and every allegation set forth in Sections I and II of this Complaint, as well as each and every allegation contained in every other Claim for Relief, as if set forth in full herein.

26. Plaintiff DIVINE WELLNESS and TRANSPORTATION, in return for a commercially reasonable premium, intended that Plaintiff DIVINE WELLNESS's sauna and cryotherapy studio business be insured against liability for personal injuries related to customers' use of Plaintiff DIVINE WELLNESS's cryotherapy services and equipment, including defense and indemnity protection against personal injury claims made by cryotherapy customers such as Maddalena.

27. If TRANSPORTATION's contentions are correct, Plaintiff DIVINE WELLNESS and TRANSPORTATION did not insure, despite the parties' intention to do so, Plaintiff DIVINE WELLNESS's sauna and cryotherapy studio business against liability for personal injuries related to customers' use of Plaintiff DIVINE WELLNESS's cryotherapy services and equipment, and did not provide for, despite the parties' intention that it do so, Plaintiff DIVINE WELLNESS defense and indemnity protection against injury claims made by cryotherapy customers.

28. Plaintiff DIVINE WELLNESS and TRANSPORTATION would have insured Plaintiff DIVINE WELLNESS's sauna and cryotherapy studio business against liability for personal injuries related to customers' use of Plaintiff DIVINE WELLNESS's cryotherapy services and equipment, including defense and indemnity protection against personal injury claims made by cryotherapy customers, but for the errors of NFP.

29. To the extent NFP was acting as a dual agent representing TRANSPORTATION and a broker representing Plaintiff DIVINE WELLNESS, the errors of NFP may be binding on both Plaintiff DIVINE WELLNESS and Defendant TRANSPORTATION.

30. As a result, Plaintiff DIVINE WELLNESS is entitled to an immediate order reforming the Policy to provide Plaintiff DIVINE WELLNESS with liability insurance coverage, including defense and indemnity, for Maddalena's personal injury claims and Lawsuit against Plaintiff DIVINE WELLNESS.

IV.

## **SECOND CLAIM FOR RELIEF**

**(Negligence – Plaintiff DIVINE WELLNESS Against NFP and TRANSPORTATION and  
DOES I-X and ROES I-X)**

31. Plaintiff DIVINE WELLNESS realleges and incorporates herein each and every allegation set forth in Sections I and II of this Complaint, as well as each and every allegation contained in every other Claim for Relief, as if set forth in full herein.

32. Plaintiff DIVINE WELLNESS requested adequate and appropriate casualty and liability insurance to protect Plaintiff DIVINE WELLNESS's sauna and cryotherapy studio business, including, specifically, liability protection, including defense and indemnity, against customer personal injury claims arising out of use of Plaintiff DIVINE WELLNESS's cryotherapy services and equipment.

33. NFP agreed to procure casualty insurance for Plaintiff DIVINE WELLNESS against liability for personal injuries arising out of Plaintiff DIVINE WELLNESS's operation of its sauna and cryotherapy studio, including, specifically, against liability for personal injuries arising out of customers' use of Plaintiff DIVINE WELLNESS's cryotherapy services and equipment.

34. NFP made that agreement while acting as an agent of TRANSPORTATION and as a broker for Plaintiff DIVINE WELLNESS.

35. When NFP procured the Policy, it did so as an agent of TRANSPORTATION.

36. NFP represented to Plaintiff DIVINE WELLNESS that the Policy as issued was consistent with the representations, requests, and agreements to insure Plaintiff DIVINE WELLNESS against liability arising out of Plaintiff DIVINE WELLNESS's operation of its sauna and cryotherapy studio business, including against claims for personal injury by customers arising out of Plaintiff DIVINE WELLNESS's cryotherapy services and equipment.

37. Plaintiff DIVINE WELLNESS relied on the representations and promises by NFP.

38. To the extent NFP acted as an agent of TRANSPORTATION, TRANSPORTATION and NFP are each independently, as well as jointly and severally, liable to Plaintiff DIVINE WELLNESS on principal-agent and vicarious liability theories.

39. As a proximate result of the aforementioned unreasonable and negligent conduct, Plaintiff DIVINE WELLNESS has suffered uninsured losses and will continue to suffer general, special, consequential, incidental, and actual damages in excess of Fifteen Thousand Dollars (\$15,000.00) and in an amount to be determined at the time of trial, including attorneys' fees, litigation costs, risk of adverse judgment and related damages, loss of opportunity damages associated with the inability to sell its business due to the NFP's and TRANSPORTATION's refusal to defend and indemnify Plaintiff DIVINE WELLNESS against Maddalena's claims and Lawsuit, and other damages in the process of pursuing coverage.

V.

### THIRD CLAIM FOR RELIEF

**(Breach of Contract – Plaintiff DIVINE WELLNESS Against TRANSPORATION and  
DOES J-X and ROES J-X)**

40. Plaintiff DIVINE WELLNESS realleges and incorporates herein each and every allegation set forth in Sections I and II of this Complaint, as well as each and every allegation contained in every other Claim for Relief, as if set forth in full herein.

41. A valid and enforceable contract, the Policy, existed between Plaintiff DIVINE WELLNESS and TRANSPORTATION.

42. The Maddalena personal injury claims and Lawsuit are covered under the Policy and not excluded thereby, because TRANSPORTATION had actual and/or constructive knowledge that Plaintiff DIVINE WELLNESS's sauna and cryotherapy studio business offered to customers

1 cryotherapy services and equipment for which Plaintiff DIVINE WELLNESS requested and  
2 expected liability insurance coverage at the time of application, at the time of Policy issuance, and  
3 thereafter, waiving the applicable Policy conditions and exclusions. To the extent that  
4 TRANSPORTATION did not waive those conditions and exclusions, they are unenforceable due to  
5 estoppel and any other legally cognizable theory due to TRANSPORTATION's knowledge of the  
foregoing facts.

43. Plaintiff DIVINE WELLNESS complied with all conditions and requirements under the Policy, except those which are unenforceable as a matter of law.

8       44. TRANSPORTATION breached the Policy by failing to provide defense and  
9 indemnity against Maddalena's claims and Lawsuit, and by failing to pay fairly, properly, and fully  
10 all amounts due on account of Maddalena's claims in Lawsuit, including as discussed above.

11       45.     As a direct and proximate result, Plaintiff DIVINE WELLNESS was and is without  
12 sufficient insurance coverage for Maddalena's claims and Lawsuit as contemplated under the Policy,  
13 and suffered other general, special, consequential, incidental, and actual damages in excess of  
14 Fifteen Thousand Dollars (\$15,000.00) and in an amount to be determined at the time of trial,  
15 including attorneys' fees, litigation costs, risk of adverse judgment and related damages, loss of  
16 opportunity damages associated with the inability to sell its business due to the NFP's and  
17 TRANSPORTATION's refusal to defend and indemnify Plaintiff DIVINE WELLNESS against  
Maddalena's claims and Lawsuit, and other damages in the process of pursuing coverage.

VI.

#### FOURTH CLAIM FOR RELIEF

**(Breach of the Implied Covenant of Good Faith and Fair Dealing – Plaintiff DIVINE WELLNESS Against TRANSPORTATION and DOES I-X and ROES I-X)**

22       46. Plaintiff DIVINE WELLNESS realleges and incorporates herein each and every  
23 allegation set forth in Sections I and II of this Complaint, as well as each and every allegation  
24 contained in every other Claim for Relief, as if set forth in full herein.

25       47.    A valid and enforceable contract, the Policy, existed between Plaintiff DIVINE  
26 WELLNESS and TRANSPORTATION.

27 48. Plaintiff DIVINE WELLNESS complied with all conditions and requirements of  
them under the Policy, except those which are unenforceable as a matter of law.

1       49. Arising out of the contract, TRANSPORTATION owed Plaintiff DIVINE  
2 WELLNESS a duty of good faith and fair dealing.

3       50. TRANSPORTATION breached that duty by, *inter alia*:

- 4           a) Consciously and unreasonably withholding Policy benefits due;
- 5           b) Consciously and unreasonably delaying Policy benefits due;
- 6           c) Consciously and unreasonably failing to thoroughly and fairly investigate all  
7           information reasonably available to it;
- 8           d) Consciously and unreasonably refusing to fully investigate Maddalena's claims  
9           and Lawsuit in good faith;
- 10           e) Consciously and unreasonably refusing to give Plaintiff DIVINE WELLNESS's  
11           interests at least as much as its own;
- 12           f) Consciously and unreasonably failing to adopt and implement reasonable or  
13           proper standards for the prompt and fair investigation of the Maddalena's claims  
14           and Lawsuit;
- 15           g) Consciously and unreasonably taking a position on coverage under the POLICY  
16           for Maddalena's claims and Lawsuit that is contrary to the clear terms of the  
17           Policy itself; and
- 18           h) Consciously and unreasonably refusing to comply with applicable insurance  
19           industry standards and laws.

20       51. TRANSPORTATION's conduct included unfair and deceptive acts or practices in  
21 violation of NRS 686A.310, and unfair methods of competition as part of a pattern and practice of  
22 improper claims administration.

23       52. As a direct and proximate cause of TRANSPORTATION's actions, Plaintiff  
24 DIVINE WELLNESS has been damaged as set forth above, including, to wit: as a direct and  
25 proximate result, Plaintiff DIVINE WELLNESS was and is without sufficient insurance coverage  
26 for Maddalena's claims and Lawsuit as contemplated under the Policy, and suffered other general,  
27 special, consequential, incidental, and actual damages in excess of Fifteen Thousand Dollars  
28 (\$15,000.00) and in an amount to be determined at the time of trial, including attorneys' fees,  
litigation costs, risk of adverse judgment and related damages, loss of opportunity damages  
associated with the inability to sell its business due to the NFP's and TRANSPORTATION's refusal

1 to defend and indemnify Plaintiff DIVINE WELLNESS against Maddalena's claims and Lawsuit,  
2 and other damages in the process of pursuing coverage.

3       53. The above outrageous actions were done by TRANSPORTATION oppressively,  
4 fraudulently, and/or with malice, expressed or implied, with a willful, wanton and/or conscious  
5 disregard for the safety of others, and thereby Plaintiff DIVINE WELLNESS is entitled to punitive  
6 damages in excess of Fifteen Thousand Dollars (\$15,000.00). In addition, punitive damages should  
7 be awarded against TRANSPORTATION as its managerial agents authorized the dealing and  
8 manner of said TRANSPORTATION's agents, employees, or servants aforementioned acts; and/or  
9 TRANSPORTATION's agents, servants, or employees were not fit or properly trained for their  
10 designated responsibilities relating to Plaintiffs; and/or TRANSPORTATION's agents, servants, or  
11 employees were employed in a managerial capacity and were acting in the scope of employment at  
12 the time of the aforementioned acts; and/or TRANSPORTATION and/or its managerial agents  
13 ratified or approved the aforementioned acts of TRANSPORTATION's agents, servants, or  
employees.

VII.

## **FIFTH CLAIM FOR RELIEF**

**(DECLARATORY RELIEF – Plaintiff DIVINE WELLNESS Against TRANSPORTATION  
and DOES I-X and ROES I-X)**

18 54. Plaintiff DIVINE WELLNESS realleges and incorporates herein each and every  
19 allegation set forth in Sections I and II of this Complaint, as well as each and every allegation  
contained in every other Claim for Relief, as if set forth in full herein.

20       55.     Based upon and as a result of all the foregoing, Plaintiff DIVINE WELLNESS is  
21 entitled to declaratory relief against TRANSPORTATION in the form of an order requiring  
22 TRANSPORTATION to immediately provide Plaintiff DIVINE WELLNESS with liability  
23 insurance coverage, including defense and indemnity, for Maddalena's personal injury claims and  
24 Lawsuit against Plaintiff DIVINE WELLNESS.

25       56. Furthermore, based upon and as a result of all the foregoing, Plaintiff DIVINE  
26 WELLNESS is entitled to declaratory relief against TRANSPORTATION in the form of an order  
27 requiring TRANSPORTATION to immediately pay to Plaintiff DIVINE WELLNESS damages  
28 directly and proximately caused by TRANSPORTATION's malfeasance, to wit: general, special,

1 consequential, incidental, and actual damages in excess of Fifteen Thousand Dollars (\$15,000.00)  
 2 and in an amount to be determined at the time of trial, including attorneys' fees, litigation costs, risk  
 3 of adverse judgment and related damages, loss of opportunity damages associated with the inability  
 4 to sell its business due to the NFP's and TRANSPORTATION's refusal to defend and indemnify  
 Plaintiff DIVINE WELLNESS against Maddalena's claims and Lawsuit, and other damages in the  
 5 process of pursuing coverage.  
 6

7 **VIII.**

8 **PRAAYER FOR RELIEF**

9 WHEREFORE, Plaintiff DIVINE WELLNESS, expressly reserving the right to amend this  
 10 Complaint at the time of trial of this action herein to include all items of damage not yet ascertained,  
 hereby demands judgment against Defendants, and each of them, as jointly and severally liable  
 11 tortfeasors to the extent allowed herein by the facts and law, as follows:

12 1. An immediate order reforming the Policy to provide Plaintiff DIVINE WELLNESS  
 13 with liability insurance coverage, including defense and indemnity, for Maddalena's  
 14 personal injury claims and Lawsuit against Plaintiff DIVINE WELLNESS, as set  
 15 forth above;

16 2. Declaratory relief against TRANSPORTATION in the form of an order requiring  
 17 TRANSPORTATION to immediately provide Plaintiff DIVINE WELLNESS with  
 18 liability insurance coverage, including defense and indemnity, for Maddalena's  
 19 personal injury claims and Lawsuit against Plaintiff DIVINE WELLNESS, as set  
 20 forth above;

21 3. For general damages in excess of in excess of Fifteen Thousand Dollars  
 22 (\$15,000.00), as set forth above;

23 4. For special damages according to proof, as set forth above;

24 5. For consequential damages in excess of in excess of Fifteen Thousand Dollars  
 (\$15,000.00), as set forth above;

25 6. For incidental damages in excess of in excess of Fifteen Thousand Dollars  
 26 (\$15,000.00), as set forth above;

27 7. For actual damages in excess of Fifteen Thousand Dollars (\$15,000.00), as set forth  
 28 above;

8. For punitive and exemplary damages in excess of in excess of Fifteen Thousand Dollars (\$15,000.00), as set forth above;

9. For pre-judgment interest;

10. For reasonable attorneys' fees and costs of suit;

11. For all allowable statutory damages and remedies against Defendants, as set forth above, including attorneys' fees, costs, pre-judgment interest, and post-judgment interest, all according to proof; and

12. For any additional and further relief as may be deemed appropriate by the Court.

DATED this 19th day of October, 2023.

JUDD J. BALMER, ESQ., LTD.  
*A Nevada Professional Corporation*

/s/ Judd J. Balmer

By:

JUDD J. BALMER, ESQ.  
Nevada Bar No. 006212  
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Henderson, Nevada 89012  
T: (702) 642-4200  
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E. joanmel@bamichlawfirm.com  
*Attorney for Plaintiff DIVINE WELLNESS, LLC,  
a Nevada Limited Liability Company, d/b/a  
ELEVATED SAUNA & CRYOTHERAPY STUDIO*

# EXHIBIT 3

## Initial Appearance Fee Disclosure

1 IAFD  
 2 **JUDD J. BALMER, ESQ.**  
 3 NEVADA BAR NO. 006212  
 4 **JUDD J. BALMER, ESQ., LTD.**  
 5 *A Nevada Professional Corporation*  
 6 170 S. Green Valley Parkway, Suite 300  
 Henderson, Nevada 89012  
 T: (702) 642-4200  
 F: (702) 642-4300  
 E: [jbalmer@balmerlawfirm.com](mailto:jbalmer@balmerlawfirm.com)  
*Attorneys for Defendant Divine Wellness, LLC,*  
*d/b/a Elevated Sauna & Cryotherapy Studio*

CASE NO: A-23-879968-C  
 Department 5

7 **DISTRICT COURT**  
 8 **CLARK COUNTY, NEVADA**

9 DIVINE WELLNESS, LLC, a Nevada Limited  
 10 Liability Company, d/b/a ELEVATED SAUNA &  
 11 CRYOTHERAPY STUDIO;

Case No.:  
 Dept. No.:

Plaintiff,

v.

12 NFP PROPERTY & CASUALTY SERVICES,  
 13 INC., a foreign corporation; TRANSPORTATION  
 14 INSURANCE COMPANY, a foreign business  
 15 entity; DOES I through XXX, inclusive; ROES I  
 16 through XXX, inclusive,

17 Defendants.

**INITIAL APPEARANCE FEE**  
**DISCLOSURE**

18 Pursuant to NRS Chapter 19, as amended by Senate bill 106, filing fees are submitted for  
 19 parties appearing in the above entitled action as indicated below:

20 DIVINE WELLNESS, LLC, d/b/a ELEVATED SAUNA & CRYOTHERAPY STUDIO: \$270.00  
 21 TOTAL REMITTED: (Required) \$270.00

22 DATED this 19th day of October, 2023.

23 **JUDD J. BALMER, ESQ., LTD.**  
 24 *A Nevada Professional Corporation*

25 By: /s/ Judd J. Balmer  
 26 JUDD J. BALMER, ESQ.  
 27 Nevada Bar No. 006212  
 28 170 S. Green Valley Parkway, Suite 300  
 Henderson, Nevada 89012  
 T: (702) 642-4200  
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*Attorneys for Defendant Divine Wellness, LLC,*  
*d/b/a Elevated Sauna & Cryotherapy Studio*



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
  - Original Proceedings. (1) Cases which originate in the United States district courts.
  - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
  - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
  - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
  - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
  - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.